certify the amount properly incurred by the respondent under clause 37(c)(iv), *supra*.

The learned trial judge disposed of the contentions of the defence and gave judgment for the respondent. Before us, the appellant in a detailed memorandum of appeal contended that the judge was wrong in law and in fact. The main burden of the appeal consisted of, if we may so summarise it, without, we hope, injustice to the arguments of counsel, a full amplification of the last ground and was that the security guarantee was a guarantee within the meaning in section 79 of the Contracts Act, 1950 and therefore inapplicable (or inoperative) until the full extent of the liability had been determined. Counsel read us a large number of cases on the meaning and obligation of a guarantee. His list of authorities he would rely on gave many more.

Section 79 of the Contracts Act, 1950 reads:

"79. A 'contract of guarantee' is a contract to perform the promise or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of which default the guarantee is given is called the 'principal debtor' and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written."

Now apply this statutory definition to the security guarantee. The promise of the principal debtor, here the contractor, was to carry out the works in accordance with the terms of the contract. The appellant in the security guarantee had not in any way contracted to do so. The liability of the principal debtor is to pay on his failure to complete the works, the amount of the damages specified in clause 34 and the amount of the expenses properly incurred by the respondent in completing the works either departmentally or by other contractor or contractors in terms of clause 37(c) of the contract. The full extent of this amount the appellant had also not promised to pay. In consequence therefore, all those cases relied on by counsel for the appellant on the requirement of the determination of the liability of the contractor as the principal debtor before the surety could be called on to discharge it are, with respect, of no application.

Though the security guarantee does not appear to fit in with the definition in section 79 of a contract of guarantee, it is, nevertheless, a guarantee but only for the purpose and to the extent stated therein. It is axiomatic in the construction of documents that the intent of a particular document must be discerned from the words themselves used. The definition of this particular document as a security guarantee clearly denotes the extent of its effect. It is a guarantee for the payment of the security deposit mentioned in clause 40. The words speak plainly for the purpose in mind. On a proper construction, the appellant had promised to pay this security deposit which the contractor was required to pay as a condition precedent in the event of his default to perform his contract. When the contract was determined in accordance with its terms on the default of the contractor, the security deposit required became payable.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Kam Woon Wah & Co.; Zain & Co.*

MURTADZA BIN MOHAMED HASSAN v. CHONG SWEE PIAN

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat F.J. & Abdoolcader J.) April 3 & November 1, 1979]

[Penang — Federal Court Civil Appeal No. 213 of 1978]

Tort — Road Accident — Damages — Professional lorry driver — Special Damages — Loss of earnings from date of accident — Loss of future earnings — Normal age of retirement for man in respondent's state in life and state of health — Damages for pain and suffering and loss of amenities — Interest on damages awarded — Need to itemise award of damages.

Damages — Personal injuries — Multiple laceration — Linear fracture of left temporal bone — Injury resulting in physical disability and mental retardation.

Damages — Special damages — Loss of future earnings — Pain, suffering and loss of amenities — Interest — Need to itemise award of damages.

In this case the appellant admitted liability for the accident which caused the injuries to the respondent and the only issue was the amount of damages. The accident occurred on November 5, 1972 and judgment was given on November 23, 1978. The respondent suffered multiple lacerations and a linear fracture of the left temporal bone, as a result of which he was unconscious for five days. The injury resulted in physical disability and mental retardation. He lost his job as a lorry driver and has been unsuccessful in getting employment. The learned trial judge awarded $16,636.80 for special damages and a global sum of $45,000 for pain and suffering and loss of amenities and for loss of future earnings. Interest at 3% was awarded on the special damages and at 6% on the whole of the general damages. The appellant appealed.

Held: (1) the loss of earnings between the date of the accident and the date of trial constituted special damages, which could be recovered, if pleaded, as in this case, and therefore the award for special damages must be upheld;

(2) in the circumstances it must be assumed that the respondent's useful working life would usually have ended at 55 years and the sum for loss of future earnings should be reduced to $15,633;

(3) on general damages for pain and suffering and loss of amenities, the sum of $20,000 awarded by the learned trial judge was appropriate;

(4) interest at 3% would be awarded on the special damages from the date of accident to date of trial and at 6% on the general damages for pain and suffering and loss of amenities from date of service of the writ. No interest should be allowed for the damages for loss of future earnings.

[Editorial Note: Reference may also be made to our note "Damages — No interest on future loss" [1979] 1 M.L.J. xxv].

Cases referred to:-

(1) *Ilkiw* v. *Samuels & Ors.* [1963] 2 All E.R. 879.

(2) *Yee Hup Transport & Co. & Anor.* v. *Wong Kong* [1967] 2 M.L.J. 93.

(3) *Jefford* v. *Gee* [1970] 1 All E.R. 1202.

(4) *Cookson* v. *Knowles* [1977] 2 All E.R. 820.

(5) *Pickett* v. *British Rail Engineering Ltd.* [1978] 3 W.L.R. 955; [1979] 1 Ll. L.R. 519, 537.

(6) *Foong Nan* v. *Sagadevan* [1971] 2 M.L.J. 24.

FEDERAL COURT.

S. Thillaimuthu for the appellant.

R. Manecksha (*R. Rajasingam* with him) for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J.: Liability for the accident having been admitted, the only issue at the trial in the High Court at Penang (Gunn Chit Tuan J.) was the amount of the damages to be awarded.

The plaintiff, a professional lorry-driver, aged 40 years at the accident, suffered multiple lacerations which when described at length on paper appeared more gruesome than they actually were or could be. But he also sustained a linear fracture of the left temporal bone, as a result of which he was unconscious for five days. It resulted in physical disability and mental degeneration. He now has some degree of spasticity and lacks co-operation of his limbs. The consultant neuro-surgeon does not think he would be able to drive lorries any more or perform work requiring physical exertion. He cannot now squat or run though he can walk about and manage himself quite satisfactorily. He also complains of headaches and it is said his intellect is affected to the extent of his undergoing a personality change, with loss of memory and a possibility, though remote, of developing epilepsy.

Before his accident, he was a paid lorry driver. He alleged he also supplemented his wages by buying and selling fruits, presumably in bulk and with the use of the lorry he was driving. He has now lost his job and is not able to carry on with his private business as a fruiterer and he has been unsuccessful to date in getting employment, either as a lorry driver or in any other occupation. In his statement of claim, he averred his income to be $175 a month, but at the trial he applied to have this figure amended to between $400 and $500. Agreement was however reached at a compromise figure of $225. This agreement has greatly facilitated the assessment of damages.

The accident occurred on November 5, 1972. The writ was taken out on July 1973, and the statement of claim delivered on October 31, 1973. The trial took place on November 23, 1978 some 5 years after and took one day. Judgment was given on the same day and the plaintiff was awarded $16,636.80 for special damages and a global sum of $45,000 for pain and suffering and loss of amenities and for loss of future earnings. Interest at 3% was awarded on the special damages and at 6% on the whole of the general damages.

Part of the special damages claimed was agreed at $436.50 for repairs to the plaintiff's motor-cycle and the travelling expenses incurred to seek medical treatment. For the second part of the special damages claimed, in the 11 months between the accident and the delivery of the statement of claim, a sum of $2,475 was awarded being 11 months times $225 p.m. Similarly for the 61 months, between the delivery of the statement of claim and the trial a sum of $13,725 was awarded on the same basis. The total came to $16,636.80. Interest at 3% p.a. was levied on this sum.

As for general damages, the learned judge discussed the claims of counsel for the respondent that the sum for pain and suffering and loss of amenities should be $26,000 and the loss of future earnings on a multiplier of 12 from November 1978, when the respondent would be 45 years old, would amount to $24,118.99.

The figure $24,118.99 is a curious figure. It shows an accuracy of calculation not displayed in any actuarial tables known to me. It is not shown what other tables were used, if any or what was the basis for this figure. The tables customarily used in our courts do not cater for units of fives. The loss is usually set in tens. The actuarial figure for a loss of $220 a month for 12 years is $23,390.40 while that for a loss of $230 a month for 12 years is $24,453.60. By taking the mean, the loss of $225 a month for 12 years is therefore $23,927.

The judge however refused to consider separate heads of damages. He felt that "it would not be easy for the court to arrive at an accurate sum of money which would compensate the plaintiff in this case for the pain and suffering he has undergone and will in all probability continue to undergo. However, bearing in mind that the various injuries are not separate heads of compensation and that it would not be right to assess the damages separately and then add them up, as in such cases there is bound to be an element of overlapping, and having regard to all the factors, I considered that in the circumstances of this case a global figure of $45,000 as general damages for loss of future earnings as well as for pain and suffering and loss of amenities should be awarded."

He then made what he described as the usual order for interest on the special damages, to be paid at 3% from the date of the accident to the date of payment and on the general damages at 6% from the date of the service of the writ to the date of payment.

The defendant appeals on the amounts of the special and general damages and on the award of interest on a global sum which necessarily includes a sum for loss of future earnings.

The learned judge's award of special damages for loss of earnings is factually from the date of accident on November 5, 1972 to the trial some 72 months later. The case for the plaintiff claimed actual loss for the period of 11 months from the date of the accident to the issue of the writ. This loss was quantified at 11 months × $225 = $2,475. It also claimed that this loss was continuing. It is therefore clear that this further period of 61 months (from the issue of the writ to the trial) was claimed as special damages. The question is whether it was correct to make such a claim by way of special damages.

I admit I have been much exercised over this question. The longer the delay in issuing the writ or the delay in having the case heard, a delay for which the malfeasor may be in no way responsible, the greater will be the amount of special damages with no relief from a consideration of the various factors which generally go to taking a multiplier which is smaller than the difference between the age of the injured party at the accident and his normal retirement age, to take account of what is generally known as the vicissitudes of life. This consideration is, I believe, the basis for counsel for the appellant submitting, as he put it, that this figure should be calculated not on an arithmetical but on a diminishing basis. However in *Ilkiw* v. *Samuels & Ors.*,[1] which was followed in this court in *Yee Hup Transport & Co. & Anor.* v. *Wong Kong*,[2] the Court of Appeal considered that the loss of earnings between the date of the accident and the date of trial constituted special damages which could be recovered, if pleaded, as they were in this case.

I would therefore uphold the award of special damages. Interest on this award will be considered later.

At the date of trial, the respondent was 40 years old and in his claim for loss of future earnings, the material question was the length of his useful working life. There was an apparent agreement by counsel that his useful working life was 12 years. But very obviously counsel were not quite clear in advising the judge what they exactly meant by this. For the appellant, it was suggested from the date of the accident. The respondent thought it was from the trial. The appellant seized on the admission of the respondent that at 40 years, he could work for another 15 years and suggested that reducing this period by 3 or 4 years for contingencies, the period for loss of future earnings from the date of the accident should be 12 years. For that reason he argued that the claim for loss of earnings from the writ to trial should be on a diminishing basis. The respondent agreed with the multiplier of 12 but suggested that this applied to the period from the date of trial and judgment. The judge factually accepted the respondent's suggestion.

For the assessment of the loss of future earnings, the basis must be the reasonable duration of the working life which the injured party would have but for the accident, with a reduction for contingencies and the fact that he would be getting a lump sum for the whole of this period, and quite clearly, the starting point is his age at the trial when his loss of future earnings comes to be assessed. At 46 years, would his working life be 14-15 years giving him a reasonable multiplier of 12 as awarded by the judge?

In my view and with respect, it is precisely at this stage that the judge failed to consider the facts of the case. He merely accepted the figure 12 suggested by the appellant and apparently agreed to by the respondent without considering that the parties had adopted different starting points. If the respondent's useful working life ends ordinarily at 55, then the appellant's suggestion of 12 from the date of the accident (when the respondent was 40 years old) would appear reasonable and correct. If it ends ordinarily at 60 years, he would have at the age of 46 been able to look forward to a working life of 13-14 years which would entitle him to a multiplier of, say, 10-11 years.

The question therefore could be resolved by a determination of the normal age of retirement for a man in the respondent's station in life and his state of health. The answer cannot come from decisions in the English courts which appear to settle the normal retirement age at 60 years, having regard to the fact that conditions in climate, health and work are vastly different. So far as our courts are concerned, there does not appear to be any case which, presuming that a party would work to the end of his useful working life, has determined his normal retirement age in this country. A review of our local cases on loss of future earnings shows however a disposition towards 55 years as being more common than one towards 60: see Kuala Lumpur Civil Suit No. 452 of 1972, unreported. Unfortunately no evidence was led in the High Court in this case on how long the respondent could have continued to work and no arguments were addressed on this point before this court and so far as I can discover, this question was never actually resolved, in any other decisions in our local courts, perhaps for the simple reason that it is generally a question of fact dependent on the particular circumstances of each case. For myself in the circumstances of this case, having regard to the facts among others, that lorry driving is quite obviously and by itself a very strenuous occupation and in the absence of any evidence to the contrary, I would take the respondent's useful working life as ending at 55 years. This leaves him with 9 actual working years at the date of the trial. This figure should be reduced to 7 years for contingencies and for the fact that he would be getting a lump sum. The sum for loss of future earnings is therefore reduced to $15,633.

On the general damages for pain and suffering and loss of amenities, I accept the suggestion which would appear to find favour with the judge of $20,000 as being an appropriate award.

On the interest that should be awarded, ever since the decision of the Court of Appeal in England in *Jefford* v. *Gee*[3] at page 1212 which has been consistently followed by the courts in England and here, interest has been awarded at one half the appropriate rate on special damages from the date of the accident to date of trial and on general damages for pain and suffering and loss of amenities at the appropriate rate from the service of the writ, but no interest is awarded on loss of future earnings. For this reason, awards on a global basis as was ordered in this case are wholly inappropriate for the imposition of interest. In *Cookson* v. *Knowles*,[4] the Court of Appeal took a different attitude and refused to award interest on the sum assessed for pain and suffering and loss of amenities on the theory that any damages were now normally subject to increase to take care of inflation, and there was no occasion to award interest as well. The House of Lords in *Pickett* v. *British Rail Engineering Ltd.*[5] disapproved of this change. With this disapproval, the position with regard to interest reverts to *Jefford* v. *Gee*. In *Foong Nan* v. *Sagadevan*[6] at page 26, this court followed *Jefford* v. *Gee, supra,* and put the appropriate rate at 6%. In the absence of any advice of any increase in this rate, I propose to continue to accept this rate.

The appeal is therefore allowed to the extent that the general damages for pain and suffering and loss of amenities are determined at $20,000 and the loss of future earnings at $15,633. Special damages remain at $16,636.80. Interest at 3% on special damages from date of accident to date of trial and at 6% on the general damages for pain and suffering and loss of amenities from date of service of the writ.

The appellant should have the costs of the appeal.

Abdoolcader J. concurred.

Raja Azlan Shah C.J. (Malaya): I have had the advantage of reading the judgment of my brother Chang Min Tat and agree with his conclusion that the appeal should be allowed to the extent there set out. I only wish to say something on the question of interest in claims for personal injuries.

It is now well recognised, on principle and authority, that the courts must itemise the award of damages in personal injury cases under three separate heads, namely, special damages, compensation for pain, suffering and loss of amenities and lastly, loss of future earnings. In *Jefford* v. *Gee*[3] Lord Denning M.R. said at page 1212 that "the court will, in future, have to itemise the damages in most personal injury cases." This is because different rules of interest apply under the separate heads. An award of interest must be made having regard to the temporal conditions applicable to them. Thus under the head of special damages the discretion to award interest is calculated from the date of the accident; an award under pain, suffering and loss of amenities carries interest from the date of service of the writ to the date of trial; an award for future earnings carries no interest at all. The reason for awarding interest is to compensate the plaintiff from being kept out of money which theoretically is due to him at the date of the accident. Therefore, to allow interest on the award of damages for future earnings is wrong on the ground that the plaintiff *ex hypothesi* has not been kept out of his money.

In *Pickett* v. *British Rail Engineering Ltd.*[5] Lord Scarman at page 537 said that the decision of the Court of Appeal in *Cookson* v. *Knowles*,[4] in so far as it purported to deny interest to general damages, was *obiter*.

In the circumstances, the learned judge erred when he failed to itemise the award of damages into separate heads, so that it made it very difficult for him properly to exercise his discretion in relation to the award of interest.

Appeal allowed.

Solicitors: *Thillaimuthu & Phock Kin; R. Rajasingam & Co.*

CHUA HAN MOW v. SUPERINTENDENT OF PUDU PRISON

[F.C. (Raja Azlan Shah C.J. (Malaya), Wan Suleiman F.J. & Hashim Yeop A. Sani J.) November 2, 1979]

[Kuala Lumpur — Federal Court Criminal Appeal No. 37 of 1978]

Administrative Law — Habeas Corpus — Applicant detained on extradition warrants — Validity of committal — Legality of committal warrants — Mistake in form of warrant — Curable — Criminal Procedure Code (F.M.S. Cap. 6), ss. 366 & 422 — Extradition Ordinance, 1958, ss. 3, 3A, 5, 8, 9, 10, 11 & 14.

International Law — Extradition — Validity of committal — Legality of committal warrants — Function of court — Principle of Speciality — Undertaking by foreign government — Extradition Ordinance, 1958, ss. 3, 3A, 5, 8, 9, 10, 11 & 14.

Criminal Law and Procedure — Habeas Corpus — Procedure to be followed by court in committal proceedings — Prima facie case — Mistake in form of committal warrant — Curable — Criminal Procedure Code (F.M.S. Cap. 6), s. 422.

This was an appeal against the decision of Syed Othman F.J. ([1979] 2 M.L.J. 70). The learned judge refused an application for writs of *habeas corpus* to secure the release of the appellant from the prison where he had been detained under section 10(1) of the Extradition Ordinance, 1958. The appellant appealed on a number of grounds, *viz.* (1) non-compliance with the statutory Form D invalidated the detention; (2) the proper test in committal proceedings was not adhered to; and (3) the learned judge erred in holding that it was not the function of the court to examine whether there was a valid treaty or any other arrangement between Malaysia and the United States and in not holding that there had been non-compliance with the provisions of section 5(2) of the Extradition Ordinance, 1958.

Held: (1) where there is jurisdiction to commit the applicant, formal or technical defects in the warrant of commitment are not a good ground for the granting of a writ of *habeas corpus*. The fresh committal warrants which were in proper form issued by the same committal courts following the committal orders before the hearing of the appeal were a good and sufficient answer to the application for writs of *habeas corpus;*

(2) an extradition proceeding is in the nature of a committal proceeding and a committal proceeding is not a trial. As such the sole function of the committing magistrate is to adjudicate upon the question whether there is a *prima facie* case against the accused, that is to say, whether there is such evidence that, if uncontradicted at the trial, a reasonable jury properly directed could convict upon it. Where there is a doubt as to the weight or quality of the evidence the committing magistrate should refrain from assessing it but instead commit the accused and leave the duty of resolving the doubt to the trial court;

(3) in this case the proper test had been applied. There was a *prima facie* case for extradition and any question with regard to the weight or quality of the testimony was more properly the function of the court having jurisdiction to try the case;

(4) it was not necessary in this case to make a finding whether there was a valid extradition treaty or arrangement between the United States and Malaya. The Treaty of 1931 although it has not been gazetted under section 3(1) of the Extradition Ordinance, 1958, read with the exchange of letters, constituted an undertaking in compliance with the requirement of section 5(2) of the Ordinance.

Cases referred to:-

(1) *Schtraks* v. *Government of Israel* [1962] 3 All E.R. 533.
(2) *In re O'Dowd* (1903) 23 N.Z.L.R. 31.
(3) *In re Prisk* (1903) 22 N.Z.L.R. 876.
(4) *Reg.* v. *Richards* 5 Q.B. 926; 13 L.J.M.C .147.
(5) *Ex parte Cross* 26 L.J.M.C. 201.
(6) *Ex parte Smith* 27 L.J.M.C. 186; 3 H & N. 227.
(7) *Ex parte Dauncey* 8 Jur. 829; 13 L.J. Ex 165.
(8) *R.* v. *Home Secretary, Ex parte Iqbal* [1979] 1 W.L.R. 425; [1979] 1 Q.B. 264.
(9) *R.* v. *Lewes Prison (Governor), Ex parte Doyle* [1917] 2 K.B. 254, 266, 269, 270.
(10) *Re Low Kuan Meng* [1962] M.L.J. 265.
(11) *Re Osman* [1954] M.L.J. 237.
(12) *Public Prosecutor* v. *Ng Goh Weng* [1979] 1 M.L.J. 127.

The following cases were also referred to in argument: *Talib Hussain* v. *State* A.I.R. 1971 S.C. 62, 64; *Che Su binte Shafie* v. *Supt. of Prisons* [1974] 2 M.L.J. 194; *Kossekechatko* v. *A.G. for Trinidad* [1932] A.C. 78, 96; *Re Tan Boon Liat & Ors.* [1977] 2 M.L.J. 108; *Ram Pargas* v. *Emperor* A.I.R. 1948 All 129; *Re Carbon Waterfield* [1960] 2 All E.R. 178; 183; *In re Golam Hussain* (1896) 4 S.S.L.R. 64, 66; *In re Arton (No. 2)* [1896] 1 Q.B. 509, 518; *The King* v. *Dix* (1901-2) 18 T.L.R. 231.

FEDERAL COURT.

Karpal Singh (*Sidney Augustine* with him) for the appellant.

Zakaria Yatim (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): On June 1, 1978, Syed Othman F.J. refused an application by counsel for the appellant for writs of *habeas corpus* directed